

**FILED**

**MAR 12 2019** *af*

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTH DISTRICT OF CALIFORNIA  
OAKLAND OFFICE

Selene Ballonoff  
2230 Dwight Way, #308  
Berkeley, CA 94704  
Telephone: 510-549-3709  
Pro Per  
Plaintiff

*IRP*  
*NP*

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

**SELENE BALLONOFF, PLAINTIFF**

**VS.**

**TOM LUCAS; FRANCESCA  
CALLEJO; SHEILA ROBELLO;  
NATALIE LUPO; SOLAN PARK AND  
ROBELLO; DOES 1-100,  
DEFENDANTS**

**CASE NO.**

**C19-1337**

**COMPLAINT**

**DEMAND FOR JURY TRIAL**

**KAW**

1. Jurisdiction. This court has jurisdiction over this Complaint because it arises under the laws of the United States.

2. Venue. Venue is appropriate in this court because at least one of the defendants reside in this district and a substantial amount of the acts and omissions giving rise to this Complaint occurred in this district.

3. Intradistrict Assignment. This lawsuit should be assigned to the Oakland Division of this Court because a substantial part of the events or omissions which give rise to this lawsuit occurred in Alameda County and San Francisco County.

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2       **4. Parties.**       Marilyn Silverman-Ballonoff is a Conservatee subject to Probate  
3 Conservatorship (hereinafter "the Conservatee")  
4 Selene Ballonoff is Marilyn Silverman-Ballonoff's daughter.  
5 Tom Lucas is s Licensed Professional Fiduciary who is Marilyn Silverman-Ballonoff's  
6 Conservator.  
7 Franchesca Callejo is Mr. Lucas's attorney.  
8 Sheila Robello is a partner in the law firm Solan, Park & Robello which is Mr. Lucas's litigation  
9 counsel.  
10 Natalie Lupo is an associate in the law firm Solan, Park & Robello.  
11 Buena Vista Manor is a Residential Care Facility for the Elderly.  
12 Compassionate Community Care is an agency that provides private caregivers to elders.  
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17       **Statement of Facts.**

18       The Alzheimer's Association, The Alzheimer Society (the Canadian counterpart to the  
19 Alzheimer's Association), The Diagnostic and Statistical Manual (the "Bible" of the American  
20 Psychiatric Association), the Mayo Clinic, Title 22 and the California Bar Association have all  
21 acknowledged multiple medical conditions that cause symptoms of dementia that can be treated  
22 and reversed. Prior to being conserved, Marilyn Silverman-Ballonoff had come to live with her  
23 daughter Selene Ballonoff so that Selene Ballonoff could assist Marilyn Silverman-Ballonoff in  
24 getting diagnosed and treated for medical conditions that cause dementia that can be treated and  
25 reversed. The declarations of Floyd Huen, M.D., Julie Griffith, M.D., Michael Lesser, M.D.;  
26 Roxanne Miller, Ph.D., Carol Kehoe, Naftali Citron, Kay Ellyard and Joey Maxey attest to the  
27 improvements in the Conservatee's cognitive function and mood while under the care of Selene  
28

1 Ballonoff.

2 In the absence of any known precipitating incident, Tom Lucas cut off all but written  
3 communication with Selene Ballonoff shortly after being appointed Conservator for Marilyn  
4 Silverman-Ballonoff. Selene Ballonoff reached out to Mr. Lucas in hopes of working together  
5 in her mother's best interests. Mr. Lucas rebuffed her and refused to provide almost any  
6 information about her mother's condition and treatment, despite the Conservatee's marked  
7 improvements under Selene Ballonoff's care. The Interim Report to the Arizona Judicial  
8 Council by the Committee on Improving Judicial Oversight and Processing of Probate Court  
9 Matters 2010 notes "singular control of information by fiduciary" and "pattern of rebuffing  
10 requests for information" as "red flags" for fiduciary abuse.  
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13 Harvard-trained Medical Doctor Julie Griffith, who specializes in Neurology and whose  
14 patients travel from all over the world seeking out her expertise in Neurological Rehabilitation  
15 evaluated the Conservatee and opined that the Conservatee could live independently and work  
16 part-time if she received appropriate diagnosis and treatment. Dr. Griffith made numerous  
17 testing and treatment recommendations in a fifteen page report she signed under penalty of  
18 perjury. Mr. Lucas fired Dr. Griffith without pay and replaced her with a visiting nurse from  
19 Kaiser. Mr. Lucas prevented Dr. Griffith from sharing her findings and recommendations with  
20 the Conservatee's other health care providers.  
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23 Selene Ballonoff is informed and believes that in 2016, the Conservatee was being given  
24 Depakote as well as the atypical antipsychotic Seroquel to the point that the Conservatee was  
25 having swallowing difficulties. Neither Depakote nor Seroquel was being administered for an  
26 FDA-approved use. A chart prepared by the State of Connecticut (which is readily available on  
27 the internet) which summarizes a peer-reviewed medical journal article on drug-induced  
28 dysphagia (swallowing difficulties) indicates that dysphagia (swallowing difficulties) is a



1 common complication of Depakote and Seroquel overdose. (The peer-reviewed medical journal  
2 article is: KM Balzer, Pharm.D. (2000) Drug-Induced Dysphagia. International Journal of MS  
3 Care: March 2000, Vol. 2, No. 1, pp. 40-50). Rather than reducing or discontinuing the  
4 Depakote and/or Seroquel, Mr. Lucas enrolled the Conservatee in an Aspiration Precautions  
5 program at Residential Care Facility for the Elderly Buena Vista Manor.

6  
7 Selene Ballonoff is informed and believes that in March of 2018, while living at Buena  
8 Vista Manor, the Conservatee developed Aspiration Pneumonia Sepsis. Mr. Lucas indicated in  
9 writing his unwillingness to have the Conservatee evaluated by a health care provider and his  
10 intention to enroll the Conservatee in Hospice. He also affirmed that Selene Ballonoff was  
11 welcome to visit the Conservatee while she was under Hospice care. The only caselaw pertinent  
12 to withholding life-sustaining treatment from a conscious conservatee is Conservatorship of  
13 Wendland, which was decided by California's Supreme Court in 2001. Wendland holds that a  
14 court order on the basis of clear and convincing evidence is necessary before a conservator can  
15 withhold life-sustaining treatment. Selene Ballonoff contacted the Kaiser Advice Nurse who  
16 sent an ambulance which transported the Conservatee to Kaiser Emergency Room.

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19 Mr. Lucas greeted Selene Ballonoff in the Emergency Room lobby by shouting: "I'm  
20 getting a Stay-away order tomorrow!" While no Stay-away order was ever granted by the  
21 Court, Selene Ballonoff is informed and believes Mr. Lucas instructed Kaiser Hospital to  
22 prevent Selene Ballonoff from visiting her mother. The Conservator was deprived of the  
23 companionship of her only child while she was in the Emergency Room. Subsequently,  
24 whenever Selene Ballonoff called Kaiser Hospital, she was told there was no record of any  
25 patient by the name of Marilyn Silverman-Ballonoff. Kaiser San Francisco is a seven story,  
26 multi-wing hospital and without knowing a patient's room number, visitation is effectively  
27 impossible. Selene Ballonoff asked Mr. Lucas where her mother was. Mr. Lucas referred Ms.  
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1 Ballonoff to his attorney Ms. Callejo, who falsely claimed the Conservatee had "not been  
2 moved" and would not answer follow up questions as to the Conservatee's whereabouts. The  
3 Conservatee was deprived of the companionship of her only child on what reasonably appeared  
4 to be her deathbed.

5 Selene Ballonoff filed a Probate Petition to Limit Authority of Conservator which has  
6 Causes of Action for Breach of Fiduciary Duty, Negligence and Elder Physical Neglect related  
7 to facts including but not limited to those described above. Mr. Lucas retained Solan Park &  
8 Robello to represent him as litigation counsel in defending against claims of Elder Physical  
9 Neglect related to facts that transpired and were facilitated by a previous Associate of Solan,  
10 Park & Robello when she was Court Appointed Counsel for the Conservatee from 2012-2014.

11 Mr. Lucas, Ms. Callejo, Sheila Robello, Natalie Lupo and Solan, Park & Robello have  
12 driven up their respective fees unnecessarily by promoting litigation rather than negotiating  
13 issues that arise in the Conservatorship and for overcharging for their services. Ms. Robello and  
14 Ms. Lupo have driven up their fees by performing unnecessary work.

#### 15 Claims

16 False Claims Act, specifically Medicare Fraud for prescribing medications and seeking  
17 Medicare reimbursement for medications prescribed for purposes for which they are not  
18 approved by the FDA.

19 Violation of First Amendment Rights to Freedom of Association between immediate family  
20 members.

21 Violation of Probate Code 2351 which requires a court order to restrict a Conservatee's visitors.

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2 Violation of the Americans with Disabilities Act which requires full and equal access to medical  
3 care for persons with disabilities.  
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5 Violation of Welfare and Institutions Code 15600 et. seq. for Elder Physical Neglect and Elder  
6 Financial Abuse for providing unnecessary services.  
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10 Request for Relief  
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13 Injunctive Relief: For the medications prescribed for off-label uses to be stopped.  
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15 Damages: for the cost of medications and medical care to get the prescriptions and for treatment  
16 of the sequelae of the medications and for the unnecessary services provided.  
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19 Demand for Jury Trial.  
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22 17. Selene Ballonoff demands a jury trial.  
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25 I certify under penalty of perjury the foregoing is true and correct except for those matters  
26 stated on information and belief and as to those matters I believe them to be true.

27  
28 Signed:



at Berkeley, California on March 11, 2019